

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
DOCKET NO. 3:14-cr-00111-FDW-DCK

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSE IVAN HERNANDEZ

Defendant.

ORDER

THIS MATTER is before the Court on the Government's Objections to the July 28, 2015 Memorandum and Recommendation (M&R) granting Defendant's Motion to Suppress. In its Objection, the Government argues that even if the undersigned "accept[s] the M&R, the Court should modify the recommendation to deny the Motion to Suppress with respect to Defendant's cell phone, as a subsequent search of the cell phone was conducted pursuant to a valid warrant." The Government argues to the undersigned that the two prongs of the independent source doctrine found in Murray v. United States, 487 U.S. 533 (1987) have been met, but this issue was not raised in the original opposition to the original Motion to Suppress. For that reason, the Court REMANDS this case back to the magistrate judge for a finding of whether the subsequent search of the cell phone pursuant to a valid warrant trumps the finding of involuntary consent and requires modification of the suppression order.

IT IS SO ORDERED.

Signed: August 19, 2015



Frank D. Whitney
Chief United States District Judge

